LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAR 13 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1166

WILLIAM E. HUTTON; JOSEPH A. W. IGLEHART; JAMES J. LEE; WILLIAM C. MILLER; EARL K. BASSETT; JOHN M. BLEAKIE; ERNEST E. KEUSCH; BENJAMIN D. WILLIAMS; JOHN J. ANGLIM; REGINALD N. BARNARD; JUSTIN J. STEVENSON, JR.; J. LOGAN BURKE; JAMES M. HUTTON, III; THOMAS C. CAFONE; HART HAGIN; CLINTON J. COOMBS; ARTHUR T. HAMILL; JAMES M. HUTTON, III, EXECUTOR OF THE ESTATE OF DEFENDANT JAMES M. HUTTON, JR., DECEASED; ROBYN B. HALL, VERNON H. HALL, III AND DUDLEY HALL, EXECUTORS OF THE ESTATE OF DEFENDANT VERNON H. HALL, II, DECEASED; AND W. E. HUTTON & CO., A PARTNERSHIP,

Petitioners,

against

THE JOHNS HOPKINS UNIVERSITY,

Respondent.

REPLY OF PETITIONERS, HUTTON, TO HOPKINS' BRIEF IN OPPOSITION

JOHN A. WILSON,
MICHAEL J. DESANTIS,
53 Wall Street
New York, New York 10005
Attorneys for Petitioners

SHEARMAN & STERLING
LAWRENCE G. GOLDE

JOHN F. KING
of Counsel

In The

Supreme Court of the United States

October Term, 1973

No. 73-1166

William E. Hutton, et al.
Petitioners,

against

The Johns Hopkins University,
Respondent

REPLY OF PETITIONERS, HUTTON, TO HOPKINS' BRIEF IN OPPOSITION

Hopkins' Brief obscures the erroneous and critically important legal ruling of the Court of Appeals on the second appeal, which requires review by this Court, namely: the Court of Appeals' holding as a matter of law that Hopkins can recover under §§ 10b and 17(a) merely on proof of material misstatements, and without regard to Hopkins' reliance, the reasonableness of its reliance, and its diligence. The Court of Appeals, therefore, simply *by-passed* the undisputed facts which it had previously found on the first appeal, and other incontrovertible evidence on those issues which Hutton has presented.

Hutton's Petition for Certiorari does not require the review and resolution by this Court of disputed evidentiary matters. Accordingly, we shall here primarily state the salient points necessary for a review of the legal questions presented by the Court of Appeals' decision.

I

The Grant of Summary Judgment of Liability to Hopkins is Not Justified by Any of the Contentions Which Hopkins Makes.

Hopkins could have read the experts' reports *before* the purchase

Although Hopkins undoubtedly concedes that it could have discovered every alleged misstatement by reading the experts' reports, it makes the feeble excuse that it had a "right" to see those reports only "after but not before the purchase" (Brief, pp. 4, 10). But the blunt facts are: that Hopkins had a "positive duty" to see those reports before making the purchase; that Cooper, one of its senior legal counsel, advised Hopkins prior to the purchase that it "had to get" and "must see" the experts' reports; and that following the meeting of February 7, Trice actually offered, prior to the purchase, to provide "any information" required by Hopkins and its counsel. But neither Hopkins nor its counsel ever bothered to obtain the reports. Thus, Hopkins deliberately "shut its eyes" to what it knew and neglected to find out what it readily could have learned.

The Fourth Circuit erroneously applied the *Mills* standard of "materiality causation"

Hopkins also argues (pp. 6-11; 22; 28-30) that the Court of Appeals affirmed findings by the District Court that Hopkins actually and reasonably relied upon misstatements by Hutton's employee, and therefore there are no such issues for this Court to review. But in fact, the Court of Appeals neither cited nor approved any of the District Court's statements concerning reliance and "right to rely." Instead, as we have shown (Petition, pp. 16-17, 19-20), the Court expressly adopted, and specifically quoted its ruling on the first appeal under § 12(2): that Hopkins could recover simply because "information about future revenues"

was an "essential" consideration for Hopkins. (App. A-4 quoting from App. E-9.) On the second appeal, therefore, the Court held Hutton liable under § 10(b) on the same proof, of *materiality only*, previously cited by the Court on the first appeal. Thus the Court in error applied the "materiality causation" rule of *Mills* in which this Court in wholly different circumstances permitted recovery without proof of reliance by thousands of plaintiff shareholders. (396 U.S. at p. 385, quoted at p. 17 of Hutton's Petition.)

We have shown in our Petition (pp. 7-12) that Hopkins did not rely upon misstatements of Hutton's employee.* By February 7, 1961, irrespective of anything which that employee may or may not have done, Hopkins had decided to "go it alone" with its own legal and financial advisors. See also, *infra* pp. 7-12.

The *Mills* and *Ute* cases are inapplicable, as other Courts of Appeals have held

Hopkins further argues (pp. 31-34) that review of the Fourth Circuit's decision is unnecessary because this Court in *Mills* and *Ute* dispensed with proof of reliance in all actions under §§ 10(b) and 17(a). But Hopkins does not mention, much less discuss, the impressive and pertinent decisions of several other Courts of Appeals and District Courts which have held that *Mills* and *Ute* dispensed with proof of reliance only in the special circumstances of those cases. These decisions with which the decision of the Fourth Circuit is in clear conflict are discussed by Hutton in its Petition (pp. 19-22). Hopkins simply ignores them.

---

* And contrary to Hopkins' assertions at p. 30, there has been no admission by Hutton of reliance on it by Hopkins. The paragraph from an affidavit of Hutton's counsel quoted by Hopkins, was not directed at the issue of reliance and the District Court also stated that (App. F-103) "this Court treats the Wilson Affidavits only as argument and therefore does not view any statements therein as admissions."

Hopkins erroneously asserts that liability should always be premised on materiality alone, simply because (p. 32) this Court noted in *Mills* that "reliance on the *non-disclosure* of a fact is a particularly difficult matter to define or prove." But Hutton has presented massive evidence which establishes that Hopkins in fact relied upon its own legal and investment advisors and did not rely and could not reasonably have relied on misstatements by Hutton's employee. Unquestionably, this Court in *Mills* and *Ute* did not hold that a plaintiff could recover under § 10(b) even if defendant proves, as here, that plaintiff did not rely, could not reasonably have relied, and in fact could readily have discovered every alleged misstatement, prior to purchase. Thus, see *Rochez Bros., Inc.* v. *Rhoades,* CCH Fed. Sec. L. Rptr. para. 94,339 (3d Cir. 1973), at CCH pp. 95,149-150. And see also, *Arber* v. *Essex Wire Co.,* CCH Fed. Sec. L. Rptr. para. 94,357 (6th Cir. 1974), n. 7 at CCH p. 95,211.

***McAlpine, Vanderboom* and *Wechsler* should have been followed by the Fourth Circuit.**

Hopkins attempts to distinguish (pp. 22-28) the decisions of the Fifth and Eighth Circuits in *McAlpine* and *Vanderboom* (certiorari denied in both) and the decision of the Second Circuit in *Wechsler.* Those cases hold that a plaintiff cannot recover under § 10(b) if he had such knowledge and notice as would have led a reasonable investor to discover the facts allegedly misstated. But as to *McAlpine* and *Vanderboom,* Hopkins asserts that (pp. 23-24) they decided only that there is no "coverage" under § 10(b) of claims against defendants who "neither sold nor purchased the securities" and who "were not in privity with the plaintiffs." This narrow reading of these decisions is wholly unjustified. Several other Courts of Appeals have stated and approved the principle as applicable to any purchase and sale transaction in which plaintiff,

prior to purchase, had inquiry-notice of alleged misstatements. These cases are cited at page 21 of Hutton's Petition. Significantly Hopkins does not discuss them or refer to them in any way.

Hopkins seeks also to imply (pp. 24-25) that the claimants in *Vanderboom* and *McAlpine* had full knowledge of the alleged misstatements and, for that reason, were barred. But the claimants in *Vanderboom* had no knowledge at all of the misstated facts but were barred because they had "ready access" to records disclosing those facts. And, although the claimants in *McAlpine* had only partial knowledge of the misrepresented financial condition, they were barred because they did have sufficient information to "arouse suspicion," but nevertheless failed to investigate. Hopkins also argues (pp. 22-23; 26-27) that the statements concerning inquiry-notice in *Vanderboom* and in *Wechsler* were simply *dicta*. But there the Courts in fact stated as a basis for their decisions that the claimants should have known and could readily have known, all of the misstatements *alleged* by them. See, in accord, the cases cited in Hutton's Petition at p. 21, ignored by Hopkins.

Reliance and reasonableness of reliance are excused only in special circumstances—and knowledge and experience are relevant factors

In support of its view that every plaintiff should be permitted to recover in any 10(b) action simply on proof of materiality, Hopkins asserts (pp. 33-34) that there is "no support in the legislation" for a standard which requires "progressively greater" proof of reliance "depending on the degree of general education" of the plaintiff. This is a palpable distortion of the real and applicable standard. For, under § 10(b) the Courts have implied a private cause of action derived from the common law; and pursuant thereto have appropriately adopted the common law requirements of "reliance" and "right to rely."

Knowledge, education and experience are obviously pertinent *factors* in evaluating reliance, reasonableness of reliance and right to rely. The ignorance of the 85 Ute Indians certainly had a just and obvious bearing on their claim as should the education and experience of the Hopkins Finance Committee and of its legal and investment consultants, upon Hopkins' claim. Compliance with the requirements of reliance and reasonableness of reliance is excused under *Mills* and *Ute* only in those special circumstances where plaintiffs did not know and could not reasonably have known the misstated facts, and it would be impracticable to require proof of reliance to the defeat of the beneficent purposes of the statute.

Hopkins was the architect of its own misfortunes and Hutton should not be made a scapegoat

Hutton has sustained any burden which might be placed upon it; and contrary to Hopkins' assertions (p. 27) Hutton has not attempted "to revive the discredited doctrine of *caveat emptor.*" Hutton's position is that Hopkins should not recover because it had actual knowledge of certain misstatements; could readily have discovered all misstatements; and could also readily have learned every other pertinent fact. Hopkins' consummation of the purchase notwithstanding, involved a wilful disregard of what it actually knew and what it could easily have found out. It was, in truth, the architect of its own misfortunes. And to permit it now to recover would make Hutton a scapegoat for the recoupment of losses actually caused by Hopkins' own derelictions.

II

The Evidence Does Not Support Many of Hopkins' Assertions, Allegations and Conclusions.

We shall not attempt here to answer in detail all the many inaccurate assertions and allegations made by

Hopkins. We shall answer only those which have most significance on Hutton's petition for review.*

Naess, along with others, actually promoted the purchase—not Hutton or LaPiere

Hopkins contends (p. 2, 3, 30): that the Finance Committee was "totally inexperienced in oil and gas production payments;" that Naess made his "recommendations" to Hopkins based upon the alleged misstatements of Hutton; that LaPiere "initiated the transaction;" and that Hutton "by their long, arduous and persistent sale solicitations" "importuned" Hopkins to make the purchase. It is inconceivable, however, that the relatively unsubstantial variations between a production payment and other types of investment should have left the members of Hopkins' Finance Committee "completely unsophisticated." Moreover, the Finance Committee was buttressed by Naess, Hopkins' investment counsel, who was experienced in oil ventures and thoroughly familiar with oil speculations, and by one of the outstanding law firms in Baltimore, Venable Baetjer & Howard.

Naess, a friend of Trice since 1957, had himself invested in and recommended Trice oil ventures to his clients. And, on August 30, 1960—before LaPiere ever met Baker or anyone from Hopkins—Trice sent directly to Naess a first Trice brochure dated August 8, 1960 covering the $2,700,000 over-all production payment; and Trice offered to pay Naess a 2% finders fee for monies invested by his clients.** Bigelow, a security analyst in Naess' firm, an-

---

* For a fair and balanced understanding of this case we respectfully refer the Court also to: Hutton's Petition and to Hutton's Brief in Opposition to Hopkins' Cross-Petition.

** Hopkins contends that Naess turned down the offer and accepted no fee (pp. 13-14). But there is no documentary evidence to support this statement and Naess' testimony on his deposition does not support Hopkins' contention.

alyzed Trice's proposal and concluded that it was speculative and involved considerable risk.

About September 14, 1960, Trice—not LaPiere or Hutton—furnished directly to Naess the second brochure dated September 16, which is Hopkins' basis for the present action. And, on September 14, 1960, Trice visited Naess in New York. Naess did not know but said he "believes" that LaPiere was present but the evidence does not establish that he was. Naess, also, testified that it was Trice who "offered" the production payment at the meeting—not Hutton, as claimed by Hopkins (p. 13).

Naess voluntarily "introduced" Trice, his friend, to Baker and also arranged the September 21, 1960 meeting for Trice with Baker. Canedy, Naess' partner, and LaPiere attended the meeting of September 21. This was the first time LaPiere had met Baker. Cliff Trice, President of Trice, personally made the sales presentation to Baker; offered the production payment to Hopkins; delivered to Baker the brochure of September 16* and explained the expected economic benefits. There is no basis for Hopkins' statement (p. 14) that LaPiere "represented" at that meeting that the figures in the brochure were "estimates of independent petroleum engineers." For, neither Baker nor Canedy could recall what any particular person said at that meeting.

Naess thereafter recommended Brown as Hopkins' own independent oil and gas consultant. And, in early October 1960, Canedy who also had previously known Trice, advised him that he and Naess "were going to recommend" the production payment to Hopkins; and on October 13, 1960, Naess advised Baker that the production payment "was interesting to the University", since Hopkins was

* The Fourth Circuit on the first appeal found that "Trice furnished Hopkins a brochure which showed the estimate of the total future net revenue for all 23 wells to be $6,500,000" (422 F.2d at p. 1128; App. E-6).

looking for investments with "some kind of kicker in them" —a profit over and above principal and interest.

On December 7, 1960, Naess and Trice conferred in Naess' office and together they telephoned Baker. Neither LaPiere nor anyone else from Hutton was present—contrary to Hopkins' statement that LaPiere was present (p. 15). Naess discussed with Baker: Hopkins' new Investment Policy, adopted November 25, 1960; and payment of Brown's fees by Trice. Baker and Naess then agreed as to the amount of the purchase to recommend to the Finance Committee (Hutton's Petition, p. 9).

Thereafter, Naess, Canedy, Baker and LaPiere attended the January 27, 1961 Finance Committee meeting.* At this meeting, Naess indicated his approval of the production payment and that he had selected Brown to check the production payment for Hopkins (Hutton's Petition, pp. 9-10).

At the end of January 1961, at the request of Baker, Cooper of Venable, Baetjer, studied the Trice brochure dated September 16, 1960, and other relevant documents. Cooper was experienced in oil ventures. He prepared a memorandum outlining the nature, grave risks and speculative character of the production payment and gave a copy of it to his partner, Dandridge. On February 1 and 6, 1961, Cooper advised Baker that Hopkins "had to get" and "*must see*" the experts' reports. But, neither Baker nor Dandridge obtained them. On February 7, 1961, the crucial February 7, 1961 meeting occurred, at which Cooper and Dandridge met with officers of Trice.**

---

* This was the only Finance Committee meeting that LaPiere ever attended. On the other hand, Canedy, a partner of Naess, attended all of the Finance Committee meetings, including those held on October 14, 1960, December 23, 1960, February 10, 1961 and February 24, 1961 at which important matters concerning the production payment were discussed.

** LaPiere was not present at the meeting of February 7, 1961. (For details of this meeting, see Hutton's Petition at pp. 10-11).

In early February 1961, Brown sent copies of his report, in which he evaluated the properties in the production payment, to Naess, Baker, Dandridge and Hopkins' Texas counsel—not only to LaPiere as Hopkins suggests (p. 17). On February 14, Naess studied the Brown report; checked on Trice at Bankers Trust and Mercantile; and in a written opinion dated February 14, 1961 strongly recommended the purchase to Hopkins. On February 24, 1961, the Finance Committee authorized the purchase. And, on March 1, 1961, Hopkins consummated the purchase. Neither LaPiere nor anyone else from Hutton was present at the closing.

Clearly, Naess was deeply involved in and actually promoted the purchase, along with Canedy, Cliff Trice and other officers of Trice. The eminent and knowledgeable Finance Committee was not "pressed" or "importuned" over a five-month period by Hutton. They had the advice of Dandridge and of Cooper and Naess, both well experienced in oil ventures, during Hopkins' negotiations. Moreover, Hopkins decided on February 7, 1961 to "go it alone" irrespective of what LaPiere may or may not have done or said prior to that time (see Hutton's Petition, p. 12).

Hopkins gambled another $1,000,000 on a second production payment hoping undoubtedly to salvage its investment in the first production payment

Hopkins claims (p. 4) that it "was so happy" with the first production payment that it bought a second production payment. This second production payment was purchased on February 14, 1962 and was for $1,000,000.* Hopkins made no claim against Hutton with respect to this payment. Hopkins made this second purchase despite the fact that: (1) Naess knew on February 13, 1962 that Trice was then "18.0 million under water" and on the verge of bank-

* Hutton did not participate in this purchase, by LaPiere or otherwise—although Naess, Canedy, Brown and others were deeply involved in that purchase.

ruptcy; (2) Naess knew there were glaring contradictions in Trice's financial representations, pointing unmistakably to dishonesty; and (3) Naess had recommended the purchase after only a telephone conversation with Trice, the highly interested seller.

Hopkins could not possibly have been "happy" with the first production payment, as it now asserts. A more accurate explanation of the second purchase would be: that Hopkins decided to gamble that if it tossed in another $1,000,000 of good money after the $1,300,000 which already seemed hopelessly lost, it might by some extraordinary stroke of good fortune save the foundering Trice, salvage the $1,300,000 and ultimately recover its $1,000,000.

On February 20, 1962, Trice thanked Naess, friend of many years, with "sincere appreciation" and with all the humility "he could muster" for "his assistance in consummating" the sale of the second production payment. No wonder that in May 1962, when Naess personally put $20,000 into a $100,000 Trice drilling program, Trice agreed to repurchase his interest for $22,000, thereby guaranteeing Naess against all loss, plus a $2,000 profit. This "sure thing" was certainly a concrete token of Trice's "sincere appreciation" of what Naess had done to effect sales to Hopkins.

Cooper and Dandridge did much more than pass upon mere matters of "drafting" and "form"

Hopkins asserts (p. 3): that legal counsel assisted it in "passing only upon the *drafting* and *form* of the security," after the Finance Committee had voted to make the purchase. But the record shows that on *February 24, 1961*, the Finance Committee "authorized" Baker to purchase the production payment "upon completion of details satisfactory to him and to counsel [Dandridge and Venable, Baetjer]." However, *prior to the meeting of February 24:* Cooper had prepared a memorandum which he gave to

Dandridge in which he outlined the grave risks and speculative character of the production payment; and Cooper also advised Baker that Hopkins "had to get" and "must see" the experts' reports. These matters all related to the *economic aspects* of the production payment, and not merely to technical legal matters. (p. 9, *supra*)

In addition, Cooper and Dandridge attended the meeting of February 7, 1961 at the offices of Venable, Baetjer at which the new and superseding Trice brochure of February 3, 1961 was delivered to Hopkins. And it was at this meeting that McCauley of Trice agreed with Dandridge that Trice would furnish a guarantee of 6% as an *absolute condition precedent to the proposed purchase.* Clearly, Cooper and Dandridge rendered much broader services to Hopkins than merely passing upon matters of drafting and of form. They undoubtedly approved the investment by Hopkins.

The change in the identity of the estimators was highly significant—but Hopkins ignored it

Hopkins seeks (p. 3) to brush aside the findings of the Fourth Circuit with respect to Hopkins' knowledge of: "LaPiere's misstatements" concerning "the identity of the estimators." It implies that the information concerning the identity of the engineers was not important, in that it merely indicated that in addition to D & M and Schafer, engineers of the Mercantile Bank also had estimated "five of the 23 wells." But in fact, the Trice brochure of February 3, 1961 made it clear that the alleged Mercantile estimates were not made by its engineers, but were based solely on a computation by Trice based upon an alleged loan formula of the Mercantile Bank in making loans to Trice (see Hutton's Petition, p. 10). Trice's speculative computation concerning the reserves of *eight* of the 23 wells could not reasonably have been regarded by Hopkins as insignificant or as a proper substitute for D&M's

estimates. As the Fourth Circuit, on the first appeal, noted (422 F.2d at 1128; App. E-6): "D&M was among the most respected engineering firms engaged in supplying independent estimates of the worth of oil and gas properties." Hopkins and its advisors were highly derelict in failing to make vigorous investigation of all aspects of the transaction when they received knowledge of the "misstatements" reflected in the Trice brochure of February 3, 1961. Certainly, Hopkins should then have obtained and read the experts' reports.*

The "Brown issue" was for the jury—as the District Court ruled

Hopkins contends (pp. 4, 5, 17): that Hutton also misrepresented that Brown "had acted for Hopkins instead of for Hutton and Trice;" that Brown was not told that "he was to act for Hopkins;" that LaPiere's "instructions to Brown were to do a quick superficial study;" and that Hopkins did not learn of LaPiere's instructions to Brown until March 18, 1963. But the record shows that the District Court rejected Hopkins' contentions concerning the "Brown issue" in its opinion of August 15, 1968 "in view of the existence of possible contrary inferences and questions of credibility involved in resolving" this issue. The Court therefore regarded the "Brown issue" as one which "should go to the jury." (297 F. Supp. at 1218; App. F-104). Moreover, Hopkins *affirmatively requested* the Fourth Circuit on the first appeal to review the "Brown issue" as an additional issue. But the Fourth Circuit refused to do so. In fact, there is no mention whatsoever of the "Brown issue" in the Court's opinion.

---

* Hopkins asserts (p. 19): that "Baker asked LaPiere for the engineering reports." But the evidence shows that: Baker testified he could only "presume" that he asked LaPiere to send the engineering reports to him; and Baker admitted that his memorandum concerning the reports "doesn't say so."

Hopkins treats the Trice guarantee as "unimportant"—despite overwhelming evidence to the contrary

Hopkins asserts (p. 20) that the "Trice guarantee" is "relatively unimportant" and "guaranteed interest only" for a "short period." But the evidence shows that the Trice letter of guarantee, negotiated by Dandridge and McCauley of Trice at the February 7, 1961 Venable, Baetjer meeting, was thereafter carefully drafted by Dandridge and by Hopkins' Texas counsel. In addition to guaranteeing interest, it also guaranteed Hopkins against payment of any Oklahoma income tax. The letter, on its face, recognizes that the *Trice guarantee was an absolute condition precedent to the purchase,* and that Hopkins "would not consummate" the purchase unless Trice entered into the "agreements" of guarantee contained in the letter.*

The guaranteed payment of interest at 6% on the principal amount, $1,300,000, was not for a "short period" but was to extend during the many years of the payout period of the Bankers Trust senior interest in the production payment. The Fourth Circuit expressly stated: "that Hopkins would not have purchased the production payment without Trice's guarantee." (422 F. 2d at 1128, App. E-5)

Baker's alleged conversation with LaPiere on 2/15/61 was not accepted by the District Court because Baker's credibility was at issue

Hopkins asserts (p. 20): that LaPiere, by telephone, informed Baker that the minutes of the four Finance Committee meetings concerning Hopkins' "proposed investment" were "all correct." But the evidence shows that Baker's credibility is seriously at issue. And the District Court in its first opinion ruled with respect to LaPiere's

* Neither LaPiere nor anyone else from Hutton ever saw or was responsible for the February 3, Trice brochure; or ever saw or knew of the Trice financial guarantee negotiated by Dandridge with McCauley on February 7, and thereafter.

telephone call that: "Because of questions of credibility, the Court does not include the substance of Baker's testimony" in the findings of fact. (297 F. Supp. at fn. p. 1191, App. F-42, F-43)

It is abundantly clear from the foregoing that many of Hopkins' assertions, allegations, and conclusions are wholly unsupported by the evidence.

Conclusion

Hutton's Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN A. WILSON,
MICHAEL J. DESANTIS,
Attorneys for Petitioners
53 Wall Street
New York, New York 10005

SHEARMAN & STERLING
LAWRENCE G. GOLDE

JOHN F. KING
of Counsel

March 13, 1974

Certificate of Service

I hereby certify that on March 13, 1974, I served upon Respondent three copies of the foregoing: Reply of Petitioners, Hutton, To Hopkin's Brief In Opposition by depositing said copies in a United States post office, with first class postage prepaid, addressed to Respondent's attorneys of record at their post office address:

John Henry Lewin, Esq. and
Edmund P. Dandridge, Jr. Esq.
1800 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

I further certify that all parties required to be served have been served.

JOHN A. WILSON,
53 Wall Street
New York, New York 10005
Counsel for Petitioners